

## INTERFERENCE DIGEST

Interference No. 105,251

Paper No.

Name: Bernhard Fleckenstein et al.

Serial No.: 09/230,048

Patent No.

Title: Viral interleukin-6

Filed: 03/12/99

Interference with Hayward et al.

### DECISION ON MOTIONS

Administrative Patent Judge, \_\_\_\_\_ Dated, \_\_\_\_\_

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### FINAL DECISION

Board of Patent Appeals and Interferences, \_\_\_\_\_ Dated, \_\_\_\_\_

Court, \_\_\_\_\_ Dated, \_\_\_\_\_

### REMARKS

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This should be placed in each application or patent involved in interference in addition to the interference letters.



## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Judge Richard Torczon  
Telephone: 571-272-9797  
Facsimile: 571-273-0042

Applicants: FLECKENSTEIN  
Application No.: 09/230,048  
Filed: 03/12/99  
For: Viral Interleukin-6

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,251.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

  
RICHARD TORCZON  
Administrative Patent Judge

MAIL STOP INTERFERENCE  
ALEXANDRIA VA 22313-1450  
Tel: 703-308-9797  
Fax: 703-305-0942

Paper 1

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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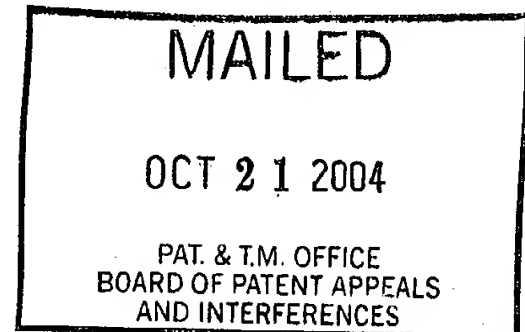
Patent Interference No. 105,251

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**Johns Hopkins University**  
(US 6,264,958 B1),  
Junior Party,

v.

**Behring Diagnostics GmbH**  
and New York University  
(09/230,048),  
Senior Party.



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DECLARATION

**A. Declaration of interference**

An interference is declared (35 U.S.C. 135(a)) between the captioned parties.

Details of the application, patent, count, and claims designated as corresponding to the count appear under headings E and F of this DECLARATION.

**B. Administrative patent judge designated to administer the interference**

Administrative Patent Judge Richard Torczon has been designated to administer this interference. 37 CFR § 41.104(a) [Bd. R. 104(a)].

**C. Standing order**

A copy of the Trial Section STANDING ORDER [SO] (Paper 2) accompanies this DECLARATION. The STANDING ORDER applies to this interference.

**D. Conference call to set dates**

A telephone conference call to set dates for action in this interference is scheduled for **2 p.m. on 16 December 2004**. (The Board will initiate the call.)

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile (SO ¶ 4.5) a list of the motions (Bd. R. 120; Bd. R. 204; SO ¶ 26) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a shorter or longer period.

The Board is conducting a pilot program in electronic filing of interference papers (Bd. R. 106(d)(2)). The procedure is explained in University of New Mexico v. Fordham Univ., No. 104,761, Paper 21 (2001).<sup>1</sup> Counsel should be prepared to discuss participation in the pilot program.

**E. The parties to this interference**

Junior Party

**Patent:** US 6,264,958, issued 24 July 2001  
(09/230,637, § 371 date 23 November 1999;  
PCT/US97/12931, filed 24 July 1997)

**Title:** Genes of Kaposi's sarcoma associated herpesvirus

**§102(g) benefit:** 60//022,591, filed 25 July 1996

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<sup>1</sup> <http://www.uspto.gov/web/offices/dcom/bpai/its/104761-021.pdf>.

Senior Party

**Application:** 09/230,048, § 371 date 12 March 1999  
(PCT/EP96/03199, filed 19 July 1996)<sup>2</sup>

**Title:** Viral interleukin-6

**§102(g) benefit:** None

**E. Count and claims of the parties**

Count 1

The polynucleotide of US 6,264,958 claim 10.<sup>3</sup>

The claims of the parties are:

JHU: 1-10

Behring: 36-38, 42-49, 52, and 53<sup>4</sup>

The claims corresponding to Count 1:

JHU: 1 and 10

Behring: 36-38, 42, 48, 52, and 53

The claims not corresponding to Count 1:

JHU: 2-9

Behring: 43-47 and 49<sup>5</sup>

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<sup>2</sup> Behring should be prepared to discuss at the initial conference compliance with 35 U.S.C. 184.

<sup>3</sup> 1. A polynucleotide encoding one or more of HHV-8 virally encoded proteins selected from the group consisting of: TS, DHFR, Bcl-2, IL-6, MIP-1A, MIP-1B, BCK, I.E. -1A, and I.E. -1B, as shown in SEQ ID NO:22, 23, 24, 25, 26, 27, 28, 29, and 30, respectively, wherein the polynucleotide does not contain HHV-8 genes which are not the divergent locus DL-B.

10. The polynucleotide of claim 1, which encodes IL-6 (SEQ ID NO25) [sic].

<sup>4</sup> The examiner believes that claims 36, 42, 52, and 53 have been canceled, but it is not apparent where that belief finds support in the record.

<sup>5</sup> The parties should be prepared to discuss at the initial conference whether the non-corresponding claims should be restricted out of the involved application.

**G. Heading to be used on papers**

Addendum 1 provides the heading that shall be used on all papers filed in the interference. See SO ¶ 7.2.1.

The range of exhibit numbers is assigned as follows (Bd. R. 154(c)(1); SO ¶ 20.2.1):

Behring: 1001-1999.

JHU.: 2001-2999.

**H. Order form for requesting file copies**

When requesting copies of files, use of Addendum 2 (SO Form 4) will greatly expedite processing of the request. Please attach a copy of Part E of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

  
RICHARD TORCZON  
Administrative Patent Judge

Enclosures:

Copy of STANDING ORDER (Paper 2)  
Copy of the application claims for 09230,048

Interference No. 105,251  
Johns Hopkins Univ. v. Behring Diag. GmbH

Paper 1  
Page 5

cc (via overnight carrier):

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**ADDENDUM 1**

Filed on behalf of: [Name of Party]  
By: [Name of lead counsel  
Name of backup counsel  
Street address  
City, State, and ZIP Code  
Tel:  
Fax: ]

Paper No. [Leave blank]

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**  
(Administrative Patent Judge Torczon)

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**Johns Hopkins University**  
(US 6,264,958 B1),  
Junior Party,

v.

**Behring Diagnostics GmbH**  
and New York University  
(09/230,048),  
Senior Party.

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Patent Interference No. 105,251

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**TITLE OF PAPER**



**ADDENDUM 2**

**FILE COPY REQUEST**  
Patent Interference No. 105,251

Attach a copy of section E of this DECLARATION to this REQUEST. On the copy, circle each patent and application that you are requesting. Include the following information to facilitate processing of this REQUEST:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address, including street, city, state, zip code and telephone number  
(do not list a Post Office box because file copies are sent by commercial  
overnight courier).  
\_\_\_\_\_  
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3. Telephone, including area code: \_\_\_\_\_

**AMENDMENTS**

Claims 1-35 (canceled.)

36. (original) Isolated viral interleukin-6 (v-IL-6) obtained by recombinant expression of the DNA of human herpes virus type 8 ("HHV-8") in an isolated cell.

37. (original) An isolated polypeptide obtained by recombinant expression of the DNA of HHV-8 in an isolated cell, and which comprises the amino acid sequence of SEQ ID NO:2.

38. (original) An isolated polypeptide having the amino acid sequence of SEQ ID NO:2.

Claims 39-41 (canceled).

42. (previously amended) A fragment obtained from the human viral interleukin-6 (v-IL-6) of claim 36 that binds to an IL-6 receptor and which can competitively inhibit the biological activity of IL-6 in a suitable assay system wherein the fragment binds to the IL-6 receptor.

43. (original) An isolated nucleic acid molecule comprising the sequence SEQ ID NO:1 and that encodes v-IL-6.

44. (previously amended) The isolated nucleic acid as described in claim 43, consisting of the nucleotide sequence of SEQ ID NO: 1.

45. (original) An isolated peptide having the amino acid sequence of SEQ ID NO:2 and obtained by recombinant expression of a DNA as described in claim 43 in an isolated cell.

46. (previously amended) An isolated nucleic acid molecule hybridizing under stringent conditions to the nucleic acid identical to SEQ ID NO:1 encoding functional v-IL-6.

47. (original) A test kit for the detection of v-IL-6 DNA or RNA, comprising a nucleic acid molecule consisting of the sequence of SEQ ID NO:1 as claimed in claim 43.

48. (original) A composition comprising as an active ingredient the polypeptide as claimed in claim 37 and a pharmaceutically acceptable carrier.

49. (original) A composition comprising as an active ingredient the nucleic acid as claimed in claim 43 and a pharmaceutically acceptable carrier.

Claims 50-51 (canceled).

52. (original) A method of culturing cells in a medium using v-IL-6, comprising the step of adding v-IL-6 to the medium.

53. (original) The method of claim 52, wherein the cells are selected from the group consisting of lymphocytes, hybridomas, hemopoietic cells and endothelial cells.